

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 390**

Citations Affected: IC 24-5-15-7; IC 24-5.5; IC 25-1-11-13.

Synopsis: Mortgage rescue protection fraud. Conference committee report for ESB 390. Provides that a homeowner may rescind a contract with a foreclosure consultant at any time before midnight of the seventh business day after the date the contract is signed. Provides that a homeowner may rescind a foreclosure reconveyance agreement at any time before midnight of the seventh business day after the homeowner's transfer of the interest in the real property that is the subject of the agreement. Requires a homeowner who rescinds: (1) a contract with a foreclosure consultant; or (2) a foreclosure conveyance agreement; to repay certain amounts advanced in connection with the contract or the agreement not later than 30 days after the date of rescission. Prohibits foreclosure consultants and foreclosure purchasers from certain actions. Requires foreclosure purchasers to: (1) ensure that title to real property is reconveyed to the homeowner in a timely manner if reconveyance is required under a foreclosure reconveyance agreement; or (2) pay the homeowner an amount equal to 66% of the net proceeds from any resale of the property, if the property is sold within 18 months of entering into the agreement. Requires a foreclosure purchaser to make a detailed accounting of the basis for the amount of payment made to the homeowner if the real property is resold within 18 months. Provides that a violation of the statute concerning mortgage rescue protection fraud is a deceptive act that is actionable by the attorney general. Allows a homeowner to bring an action for damages for a violation of the mortgage rescue protection fraud laws. Allows a court to award treble damages for a willful or knowing violation of the mortgage rescue protection fraud laws. Requires the Indiana housing and community development authority to maintain a list of nonprofit organizations that offer counseling or advice to homeowners in foreclosure or loan defaults. Excludes certain banks, trust companies, governmental entities, attorneys, and other persons from the law. **(This conference committee report does the following: (1) Specifies that a mortgagee is responsible for providing the required foreclosure notice to the mortgagor at the time the mortgagee files a complaint for foreclosure. (2) Provides that a homeowner may rescind a contract with a foreclosure consultant at any time before midnight of the seventh business day after the date the contract is signed. (ESB 390 as printed April 6, 2007 allows a homeowner to rescind a foreclosure consultant contract at any time.) (3) Eliminates the requirement that a homeowner who rescinds: (A) a foreclosure consultant**

contract; or (B) a foreclosure reconveyance agreement; must pay 8% interest in addition to any amounts advanced under the contract. (4) Prohibits: (A) a foreclosure consultant from entering into a foreclosure consultant contract; and (B) a foreclosure purchaser from entering into a foreclosure reconveyance agreement; unless the foreclosure consultant or the foreclosure purchaser first gives written notice to the homeowner of the homeowner's rights under the mortgage rescue protection fraud statute. (5) Removes a provision that makes a violation of the mortgage rescue protection fraud statute a Class A misdemeanor.)

Effective: July 1, 2007.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 390 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 24-5-15-7 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) **Except as**
4 **provided in subsection (d),** a contract between a consumer and a
5 credit services organization concerning the purchase of the services of
6 the credit services organization must be in writing, be dated and signed
7 by both the consumer and the credit services organization, and include
8 all of the following:
9 (1) A statement in at least 10 point boldface type in immediate
10 proximity to the space reserved for the signature of the buyer that
11 reads:
12 "You, the buyer, may cancel this contract at any time before
13 midnight of the third business day after the date of the
14 transaction. See the attached notice of cancellation form for an
15 explanation of this right."
16 (2) The terms and conditions of payment, including the total
17 amount of all payments to be made by the buyer to the credit
18 services organization or to another person.
19 (3) A complete and detailed description of the services to be
20 performed and the results to be achieved by the credit services
21 organization for or on behalf of the buyer, including all
22 guarantees and all promises of full or partial refunds and a list of

1 the adverse information appearing on the consumer's credit report
2 that the credit services organization expects to have modified and
3 the estimated date by which each modification will occur.

4 (4) The principal business address of the credit services
5 organization and the name and address of the credit services
6 organization's agent in Indiana authorized to receive service of
7 process.

8 (b) A contract shall be accompanied by two (2) copies of a form
9 captioned "NOTICE OF CANCELLATION" attached to the contract
10 and that contains the following statement in at least 10 point boldface
11 type:

12 NOTICE OF CANCELLATION

13 You may cancel this contract, without any penalty or obligation, at any
14 time before midnight of the third business day after the date the
15 contract is signed.

16 If you cancel, any payment made by you under this contract will be
17 returned within ten days following receipt by the seller of your
18 cancellation notice, or any other written notice, to

19 _____
20 (name of seller)

21 _____
22 (address of seller) (place of business)

23 not later than midnight _____

24 (date)

25 "I hereby cancel this transaction". _____

26 (date)

27 _____
28 (buyer's signature)

29 (c) A credit services organization shall give a copy of the completed
30 contract and all other documents required by the credit services
31 organization to the buyer at the time the contract and the documents are
32 signed.

33 (d) If a contract is subject to this chapter and to IC 24-5.5,
34 IC 24-5.5-4 applies to the contract.

35 SECTION 2. IC 24-5.5 IS ADDED TO THE INDIANA CODE AS
36 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
37 2007]:

38 ARTICLE 5.5. MORTGAGE RESCUE PROTECTION FRAUD

39 Chapter 1. Application

40 Sec. 1. This article does not apply to the following:

- 41 (1) A person organized or chartered under the laws of this
- 42 state, any other state, or the United States that relate to a
- 43 bank, a trust company, a savings association, a savings bank,
- 44 a credit union, or an industrial loan and investment company.
- 45 (2) The Federal National Mortgage Association, the Federal
- 46 Home Loan Mortgage Corporation, or a Federal Home Loan
- 47 Bank.
- 48 (3) A department or agency of the United States or of Indiana.
- 49 (4) A person that is servicing or enforcing a loan that it owns.
- 50 (5) A person that is servicing a loan:
- 51 (A) for a person described in subdivisions (1) through (4)

1 of this section; or
 2 **(B) insured by the Department of Housing and Urban**
 3 **Development or guaranteed by the Veterans**
 4 **Administration.**

5 **(6) An attorney licensed to practice law in Indiana who is**
 6 **representing a mortgagor.**

7 **Chapter 2. Definitions**

8 **Sec. 1. The definitions in this chapter apply throughout this**
 9 **article.**

10 **Sec. 2. "Foreclosure consultant" means a person who, directly**
 11 **or indirectly, makes a solicitation, a representation, or an offer to**
 12 **a homeowner to perform, with or without compensation, any**
 13 **service that the person represents will:**

14 **(1) prevent or postpone the initiation of a foreclosure**
 15 **proceeding, or reverse the effect of a foreclosure proceeding;**

16 **(2) allow the homeowner to become a lessee or renter in the**
 17 **homeowner's residence during or after a foreclosure**
 18 **proceeding; or**

19 **(3) allow the homeowner to have an option to repurchase the**
 20 **homeowner's residence after a foreclosure proceeding.**

21 **Sec. 3. "Foreclosure purchaser" means a person who purchases**
 22 **real property in a foreclosure proceeding.**

23 **Sec. 4. "Foreclosure reconveyance" means a transaction**
 24 **involving:**

25 **(1) the transfer of interest in real property by a homeowner**
 26 **to a person during or incident to a proposed foreclosure**
 27 **proceeding, either by:**

28 **(A) transfer of interest from the homeowner to the person;**
 29 **or**

30 **(B) creation of a mortgage, trust, or other lien or**
 31 **encumbrance during the foreclosure process;**

32 **that allows the person to obtain legal or equitable title to all**
 33 **or part of the real property; and**

34 **(2) the subsequent conveyance, or promise of subsequent**
 35 **conveyance, of interest back to the homeowner by the person**
 36 **or the person's agent that allows the homeowner to possess**
 37 **the real property following the completion of the foreclosure**
 38 **proceeding.**

39 **Sec. 5. "Formal settlement" means a face-to-face meeting with**
 40 **a homeowner to complete final documents incident to the:**

41 **(1) sale or transfer of real property; or**

42 **(2) creation of a mortgage or equitable interest in real**
 43 **property;**

44 **conducted by a person who is not employed by or an affiliate of the**
 45 **foreclosure purchaser.**

46 **Sec. 6. "Homeowner" means a person who holds record title to**
 47 **residential real property as of the date on which:**

48 **(1) a contract with a foreclosure consultant; or**

49 **(2) a foreclosure reconveyance agreement;**

50 **with respect to the residential real property is entered into.**

51 **Chapter 3. Notice of Foreclosure**

1 **Sec. 1. In addition to any other notice required by law, a**
 2 **mortgagee, or the mortgagee's assignee, that proceeds under**
 3 **IC 32-30-10 to foreclose a mortgage or deed of trust shall, at the**
 4 **time of filing the complaint in the action, provide the following**
 5 **written notice to the mortgagor in a statement printed in at least**
 6 **14 point boldface type:**

7 **"NOTICE REQUIRED BY STATE LAW**

8 **Mortgage foreclosure is a complex process. People may**
 9 **approach you about "saving" your home. You should be**
 10 **careful about any such promises. There are government**
 11 **agencies and nonprofit organizations you may contact for**
 12 **helpful information about the foreclosure process. For the**
 13 **name and telephone number of an organization near you,**
 14 **please call the Indiana housing and community**
 15 **development authority."**

16 **Service of the written notice required by this chapter shall be made**
 17 **as provided in the Indiana Rules of Trial Procedure governing**
 18 **service of process upon a person.**

19 **Chapter 4. Rescission of Contracts With Foreclosure**
 20 **Consultants and Foreclosure Reconveyance Agreements**

21 **Sec. 1. In addition to any other right under law to cancel or**
 22 **rescind a contract, a homeowner may rescind a:**

- 23 **(1) contract with a foreclosure consultant at any time before**
 24 **midnight of the seventh business day after the date the**
 25 **contract is signed; and**
 26 **(2) foreclosure reconveyance agreement at any time before**
 27 **midnight of the seventh business day after the homeowner's**
 28 **transfer of the interest in the real property that is the subject**
 29 **of the agreement, as described in IC 24-5.5-2-4(1).**

30 **Sec. 2. A homeowner effectively rescinds a contract with a**
 31 **foreclosure consultant if the homeowner gives written notice of a**
 32 **rescission to the foreclosure consultant by one (1) of the following:**

- 33 **(1) Mailing the rescission to the address specified in the**
 34 **contract.**
 35 **(2) Sending the rescission through any facsimile or electronic**
 36 **mail address identified in the contract or other material**
 37 **provided to the homeowner by the foreclosure consultant.**

38 **Sec. 3. (a) If a notice of rescission under this chapter is sent by**
 39 **mail, the rescission is effective three (3) days after the notice is**
 40 **deposited in the U.S. mail, properly addressed, with postage**
 41 **prepaid.**

42 **(b) A homeowner is not required to give notice of rescission in**
 43 **the form required under the contract if the form under the**
 44 **contract is inconsistent with the requirements under this chapter.**

45 **Sec. 4. (a) If a homeowner rescinds a contract with a foreclosure**
 46 **consultant or a foreclosure reconveyance agreement, the**
 47 **homeowner shall, not later than thirty (30) days after the date of**
 48 **rescission, repay any amounts paid or advanced by:**

- 49 **(1) the foreclosure consultant or the foreclosure consultant's**
 50 **agent under the terms of the foreclosure consulting contract;**
 51 **or**

1 (2) a person under a foreclosure reconveyance agreement.

2 (b) A rescission by a homeowner under this chapter is void if the
3 payments required under this section are not made within the time
4 set forth in subsection (a).

5 **Sec. 5. If a homeowner rescinds a contract with a foreclosure**
6 **consultant, not less than ten (10) days following the effective date**
7 **of the rescission, the consultant shall return to the homeowner any**
8 **payments made by the homeowner, less any amounts for actual**
9 **services rendered.**

10 **Chapter 5. Limitations on Foreclosure Consultants and**
11 **Foreclosure Reconveyances**

12 **Sec. 1. For purposes of this chapter, there is a rebuttable**
13 **presumption that:**

14 (1) a homeowner has a reasonable ability to pay for a
15 subsequent reconveyance of real property if the homeowner's
16 payments for primary housing expenses and regular principal
17 and interest payments on other personal debt, on a monthly
18 basis, do not exceed sixty percent (60%) of the homeowner's
19 monthly gross income; and

20 (2) the foreclosure purchaser has not verified reasonable
21 payment ability if the foreclosure purchaser has not obtained
22 documents other than a statement by the homeowner of
23 assets, liability, and income.

24 **Sec. 2. In addition to any prohibitions that apply under**
25 **IC 24-5-15-1 through IC 24-5-15-8, a foreclosure consultant may**
26 **not:**

27 (1) enter into or attempt to enter into a foreclosure consultant
28 contract with a homeowner unless the foreclosure consultant
29 first provides the homeowner written notice of the
30 homeowner's rights under this article;

31 (2) demand or receive compensation until after the
32 foreclosure consultant has fully performed all services the
33 foreclosure consultant contracted to perform or represented
34 that the foreclosure consultant would perform, unless the
35 foreclosure consultant complies with the security
36 requirements under IC 24-5-15-8;

37 (3) demand or receive a fee, interest, or any other
38 compensation that exceeds eight percent (8%) per year of the
39 amount of any loan that the foreclosure consultant makes to
40 the homeowner;

41 (4) take a wage assignment, a lien of any type on real or
42 personal property, or any other security to secure the
43 payment of compensation;

44 (5) receive consideration from a third party in connection
45 with foreclosure consulting services provided to a homeowner
46 unless the consideration is first fully disclosed in writing to the
47 homeowner;

48 (6) acquire any interest, directly or indirectly, in residential
49 real property in foreclosure from a homeowner with whom
50 the foreclosure consultant has contracted; or

51 (7) except to inspect documents as provided by law, take any

- 1 power of attorney from a homeowner for any purpose.
- 2 **Sec. 3. A foreclosure purchaser may not enter into or attempt to**
- 3 **enter into a foreclosure reconveyance agreement with a**
- 4 **homeowner unless the:**
- 5 **(1) foreclosure purchaser verifies and demonstrates that the**
- 6 **homeowner has or will have a reasonable ability to:**
- 7 **(A) pay for the subsequent reconveyance of the property**
- 8 **back to the homeowner on completion of the terms of the**
- 9 **foreclosure conveyance; or**
- 10 **(B) if the foreclosure conveyance provides for a lease with**
- 11 **an option to repurchase the real property, make the lease**
- 12 **payment and repurchase the real property within the**
- 13 **period of the option to repurchase;**
- 14 **(2) foreclosure purchaser provides the homeowner written**
- 15 **notice of the homeowner's rights under this article;**
- 16 **(3) foreclosure purchaser and the homeowner complete a**
- 17 **formal settlement before any transfer of interest in the**
- 18 **affected property; and**
- 19 **(4) foreclosure purchaser complies with the security**
- 20 **requirements under IC 24-5-15-8.**
- 21 **Sec. 4. A foreclosure purchaser shall:**
- 22 **(1) ensure that title to real property has been reconveyed to**
- 23 **the homeowner in a timely manner if the terms of a**
- 24 **foreclosure reconveyance agreement require a reconveyance;**
- 25 **or**
- 26 **(2) if the real property subject to a foreclosure reconveyance**
- 27 **agreement is sold within eighteen (18) months after entering**
- 28 **into the foreclosure reconveyance agreement, make payment**
- 29 **to the homeowner not later than ninety (90) days after the**
- 30 **resale of the real property in an amount equal to at least**
- 31 **sixty-six percent (66%) of the net proceeds from the resale of**
- 32 **the property.**
- 33 **Sec. 5. A foreclosure purchaser may not:**
- 34 **(1) enter into repurchase or lease terms as part of the**
- 35 **foreclosure reconveyance that are unfair or commercially**
- 36 **unreasonable or engage in any other unfair conduct;**
- 37 **(2) represent, directly or indirectly, that the:**
- 38 **(A) foreclosure purchaser is acting:**
- 39 **(i) as an adviser or a consultant; or**
- 40 **(ii) in any other manner on behalf of the homeowner;**
- 41 **(B) foreclosure purchaser is assisting the homeowner to**
- 42 **save the residence; or**
- 43 **(C) foreclosure purchaser is assisting the homeowner in**
- 44 **preventing a foreclosure if the result of the transaction is**
- 45 **that the homeowner will not complete a redemption of the**
- 46 **property; or**
- 47 **(3) until the homeowner's right to rescind or cancel the**
- 48 **foreclosure reconveyance agreement has expired:**
- 49 **(A) record any document, including an instrument or**
- 50 **conveyance, signed by the homeowner; or**
- 51 **(B) transfer to a third party or encumber, or purport to**

1 transfer to a third party or encumber, any interest in the
2 residential real property in foreclosure.

3 **Sec. 6. A foreclosure purchaser shall make a detailed accounting**
4 **of the basis for the amount of payment made to a homeowner of**
5 **real property resold within eighteen (18) months after entering into**
6 **a foreclosure reconveyance agreement on a form prescribed by the**
7 **attorney general.**

8 **Chapter 6. Enforcement**

9 **Sec. 1. A person who violates this article commits a deceptive act**
10 **that is actionable by the attorney general under IC 24-5-0.5-4 and**
11 **is subject to the penalties and remedies available to the attorney**
12 **general under IC 24-5-0.5.**

13 **Sec. 2. (a) A homeowner may bring an action against a person**
14 **for damages incurred as a result of a violation of this article.**

15 **(b) A homeowner who:**

16 **(1) brings an action under this section; and**

17 **(2) is awarded damages;**

18 **may seek reasonable attorney's fees.**

19 **Sec. 3. (a) A court may award attorney's fees under section 2(b)**
20 **of this chapter.**

21 **(b) If the court finds that a person willfully or knowingly**
22 **violated this article, the court may award damages equal to three**
23 **(3) times the amount of actual damages.**

24 **Sec. 4. (a) The Indiana housing and community development**
25 **authority shall maintain a list of nonprofit organizations that:**

26 **(1) offer counseling or advice to homeowners in foreclosure or**
27 **loan defaults; and**

28 **(2) do not contract for services with for-profit lenders or**
29 **foreclosure purchasers.**

30 **(b) The Indiana housing and community development authority**
31 **shall provide names and telephone numbers of the organizations**
32 **described in subsection (a) to a homeowner upon request.**

33 **Sec. 5. The attorney general may adopt rules under IC 4-22-2**
34 **necessary to implement this article.**

35 **Sec. 6. Except as provided in IC 24-5-15-7(d), this article may**
36 **not be construed to preempt the provisions of IC 24-5-15-1 through**
37 **IC 24-5-15-11.**

38 **SECTION 3. IC 25-1-11-13 IS AMENDED TO READ AS**
39 **FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) The board may**
40 **summarily suspend a practitioner's license for ninety (90) days before**
41 **a final adjudication or during the appeals process if the board finds that**
42 **a practitioner represents a clear and immediate danger to the public's**
43 **health, safety, or property if the practitioner is allowed to continue to**
44 **practice. The summary suspension may be renewed upon a hearing**
45 **before the board, and each renewal may be for not more than ninety**
46 **(90) days.**

47 **(b) The board may summarily suspend the license of a real**
48 **estate appraiser for ninety (90) days before a final adjudication or**
49 **during the appeals process if the board finds that the licensed real**
50 **estate license appraiser has engaged in material and intentional**
51 **misrepresentations or omissions in the preparation of three (3) or**

1 more written appraisal reports that were submitted by a person to
2 obtain a loan. The summary suspension may be renewed after a
3 hearing before the board. Each renewal may be for not more than
4 ninety (90) days.

5 (c) Before the board may summarily suspend a license under
6 this section, the consumer protection division of the office of the
7 attorney general must make a reasonable attempt to notify a
8 practitioner of:

9 (1) a hearing by the board to suspend a practitioner's license;
10 and

11 (2) information regarding the allegation against the
12 practitioner.

13 The consumer protection division of the office of the attorney
14 general must also notify the practitioner that the practitioner may
15 provide a written or an oral statement to the board on the
16 practitioner's behalf before the board issues an order for summary
17 suspension. A reasonable attempt to reach the practitioner is made
18 if the consumer protection division of the office of the attorney
19 general attempts to reach the practitioner by telephone or facsimile
20 at the last telephone number of the practitioner on file with the
21 board.

(Reference is to ESB 390 as printed April 6, 2007.)

Conference Committee Report
on
Engrossed Senate Bill 390

Signed by:

Senator Drozda
Chairperson

Representative Bardon

Senator Broden

Representative Koch

Senate Conferees

House Conferees